

February 27, 2006

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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
c/o Natek
236 Massachusetts Avenue, N.E., Suite 110
Washington, DC 20002

Federal Communications Commission
Office of Secretary

In re: *Closed Captioning and Video Description of Video Programming –
Implementation of Section 305 of the Telecommunications Act of 1996 – Video
Programming Accessibility*

CGB-CC-0090 – Opposition of Telecommunications for the Deaf and Hard of
Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing
Consumer Advocacy Network, and Hearing Loss Association of America to the
Petition for Exemption from Closed Captioning Requirements Filed by
Springfield Community Church

Dear Ms. Dortch:

Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and Hearing Loss Association of America hereby submit for filing in the above-captioned proceeding their opposition to the petition for exemption from the closed captioning requirements filed by Springfield Community Church.

An original and two (2) copies of this filing are enclosed. Please date-stamp the enclosed extra copy of this filing and return it in the self-addressed envelope provided. Should you have any questions concerning this matter, please do not hesitate to contact us.

Respectfully submitted,



Paul O. Gagnier
Troy F. Tanner

Their Counsel

Enclosure

Marlene H. Dortch, Secretary

February 27, 2006

Page 2

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Mr. Claude L. Stout (TDI)

Mr. Kelby N. Brick, Esq. (NAD)

Ms. Cheryl Heppner (DHHCAN)

Ms. Brenda Battat (HLAA)

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Closed Captioning and Video Description of Video Programming)	
)	CGB-CC-0090
Implementation of Section 305 of the Telecommunications Act of 1996 --)	
)	
Video Programming Accessibility)	

**OPPOSITION OF TELECOMMUNICATIONS FOR THE DEAF AND HARD OF
HEARING, INC., NATIONAL ASSOCIATION OF THE DEAF, THE DEAF AND HARD
OF HEARING CONSUMER ADVOCACY NETWORK, AND HEARING LOSS
ASSOCIATION OF AMERICA TO
THE PETITION FOR EXEMPTION FROM CLOSED CAPTIONING REQUIREMENTS
FILED BY SPRINGFIELD COMMUNITY CHURCH**

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Dated: February 27, 2006

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**OPPOSITION TO THE PETITION FOR EXEMPTION FROM CLOSED
CAPTIONING REQUIREMENTS FILED BY
SPRINGFIELD COMMUNITY CHURCH**

I. INTRODUCTION

Telecommunications for the Deaf and Hard of Hearing, Inc., the National Association of the Deaf, the Deaf and Hard of Hearing Consumer Advocacy Network, and the Hearing Loss Association of America (together, "Commenters"), by their undersigned counsel, hereby submit their opposition to the petition for an exemption ("Petition") from the Commission's closed captioning requirements for a televised video program aired on a weekly basis filed by Springfield Community Church ("Petitioner"), the program's producer.

Telecommunications for the Deaf and Hard of Hearing, Inc. ("TDI") is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind, so that they may enjoy the opportunities and benefits of the telecommunications revolution to which they are entitled. TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

Established in 1880, the National Association of the Deaf ("NAD") is the nation's oldest and largest nonprofit organization safeguarding the accessibility and civil rights of 28 million

deaf and hard of hearing Americans across a broad range of areas including education, employment, health care, and telecommunications. Primary areas of focus include grassroots advocacy and empowerment, policy development and research, legal assistance, captioned media, information and publications, and youth leadership.

The Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), established in 1993, serves as the national coalition of organizations¹ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

Hearing Loss Association of America (“HLAA”) is the nation's foremost consumer organization representing people with hearing loss. HLAA's national support network includes an office in the Washington D.C. area, 13 state organizations, and 250 local chapters. HLAA's mission is to open the world of communication to people with hearing loss through information, education, advocacy, and support. HLAA provides cutting edge information to consumers, professionals and family members through their website, www.hearingloss.org, their award – winning publication, *Hearing Loss*, and hearing accessible national and regional conventions. HLAA impacts accessibility, public policy, research, public awareness, and service delivery related to hearing loss on a national and global level.

¹/ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf and Hard of Hearing, Inc. (TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

Commenters fully support the creation of programming to address the diversity of interests and views of the American public, including programs that derive their inspiration from addressing religious and spiritual matters. Commenters respectfully submit, however, that the Petition does not meet the statutory requirements necessary to support an exemption from the closed captioning rules or Petitioner's contention that compliance with the closed captioning requirements would impose an undue burden.² As set forth below, Petitioner has provided insufficient information to establish that the legal standard for granting the Petition has been met. Petitioner also has failed to establish that the program in question qualifies for an exemption under Section 79.1(d)(8) of the Commission's Rules. Commenters therefore respectfully oppose grant of the Petition.

II. THE LEGAL STANDARD FOR GRANTING A PETITION FOR EXEMPTION

Section 713 of the Communications Act of 1934, as amended, generally requires that video programming be closed captioned, regardless of distribution technologies, to ensure that it is accessible to persons with hearing disabilities.³ The Commission has the authority to grant a petition for an exemption from the closed captioning requirements upon a showing that the requirements would impose an undue burden on the video programming provider or video owner.⁴ Congress defined "undue burden" to mean "significant difficulty or expense."⁵

A petition seeking a waiver of the captioning rules must demonstrate that compliance would result in an undue burden within the meaning of Section 713(e) and Section 79.1(f) of the Commission's rules.⁶ Section 713 requires the Commission to consider four factors when determining whether the closed captioning requirements will impose an undue burden: (1) the

^{2/} 47 U.S.C. § 613(e).

^{3/} *Id.*

^{4/} *Id.*

^{5/} *Id.*

nature and cost of the closed captions for the programming; (2) the impact on the operation of the provider or program owner; (3) the financial resources of the provider or program owner; and (4) the type of operations of the provider or program owner.⁷

Section 79.1(f) of the Commission's rules sets forth the Commission's procedures for seeking an exemption from the closed captioning requirements on the basis that compliance would impose an undue burden.⁸ A petition for an exemption from the closed captioning requirements must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.⁹ Such petition must contain a detailed, full showing, supported by affidavit, of any facts or considerations relied on by the petitioner.¹⁰ It must also describe any available alternatives that might constitute a reasonable substitute for the captioning requirements.¹¹

III. PETITIONER HAS PRESENTED INSUFFICIENT INFORMATION TO DEMONSTRATE THAT COMPLIANCE WITH THE CAPTIONING REQUIREMENT WOULD IMPOSE AN UNDUE BURDEN

Petitioner requests an exemption from the closed captioning requirements for its weekly "The Living Word of Faith Telecast" video program asserting that compliance would impose an undue burden on Petitioner.¹² The Petitioner asserts that to require closed captioning would result in the ministry having to "discontinue its outreach telecast."¹³ As Commenters discuss below, the Petition offers insufficient evidence to demonstrate that compliance would impose an undue burden under the four statutory exemption factors. The Petition therefore does not meet the legal standard for granting a request for exemption of the closed captioning rules.

^{6/} 47 U.S.C. § 613(e); 47 C.F.R. § 79.1(f).

^{7/} *Id.*

^{8/} 47 C.F.R. § 79.1(f).

^{9/} *Id.* § 79.1(f)(2).

^{10/} *Id.* § 79.1(f)(9).

^{11/} *Id.* § 79.1(f)(3).

^{12/} Petition at p. 1.

Petitioner also notes that its program should fall under the exemption for local, non-news programming.¹⁴ However, this exemption applies only to video programming distributors as defined under Section 79.1(a)(2) of the Commission's Rules.¹⁵ Section 79.1(a)(2) requires a distributor to own or operate the transmission network or broadcasting facilities that actually deliver the programming into the residential home.¹⁶ Petitioner, as a producer of programming, does not qualify for such an exemption.

A. Exemption Criteria Under Section 79.1(f)(2)

As more fully discussed below, Commenters respectfully submit that the Petition is not supported by sufficient evidence to demonstrate that compliance with the closed captioning requirements would impose an undue burden upon Petitioner as required by the statutory factors set forth under Section 79.1(f)(2) of the Commission's rules.¹⁷

First factor: The nature and cost of the closed captions. In judging the sufficiency of information filed to support a claim that the cost of implementing closed captioning will impose an undue burden, the Commission looks to whether the petitioner:

- (1) sought competitive pricing from multiple sources;
- (2) submitted copies of the correspondence received from such captioning companies, indicating a range of quotes;
- (3) provided details regarding its financial resources; and
- (4) sought any means to recoup the cost of closed captioning, such as through grants or sponsorships.¹⁸

^{13/} Petition at p. 2.

^{14/} *Id.*

^{15/} 47 C.F.R. § 79.1(a)(2).

^{16/} *Id.*

^{17/} 47 C.F.R. § 79.1(f)(2).

^{18/} *Outland Sports, Inc., Video Programming Accessibility, Petition for Waiver of Closed Captioning Requirements*, 16 FCC Rcd 13605 (2001) ("*Outland Sports*") (advising that entities seeking a waiver of the captioning requirements seek cost quotes from multiple sources and provide correspondence evidencing the quotes obtained, provide detailed financial information, and discuss whether any efforts were made to recoup the cost of closed captioning). *See also The Wild Outdoors, Video Programming Accessibility, Petition for Waiver of Closed*

Moreover, the Commission has determined that petitioners must make an effort to solicit captioning assistance from the distributors of its programming.¹⁹ Failure to provide the foregoing information and to establish that the Petitioner pursued other possible means of gaining captioning hinders the Commission's assessment of the impact of the cost of captioning on Petitioner.²⁰

Petitioner fails to demonstrate that it sought competitive pricing for captioning from multiple sources. Petitioner asserts that it does not have closed captioning equipment itself and would have to pre-tape the programs, send them to an outside source and have them delivered back to the station for broadcast.²¹ Petitioner's assertions are factually incorrect as real time captioning is a viable means of providing captioning for live programming. Petitioner states that it received a quote from the television station that airs the program at a price per Sunday telecast of between \$400 and \$600 and that there is no "feasible alternative for this type of programming."²² Petitioner provides no documentation from the television station, nor does it even assert that it sought out competitive pricing from multiple sources.

Petitioner fails to submit copies of correspondence evidencing the receipt of a range of quotes. As discussed above, Petitioner has not provided a single document verifying that it sought a competitive quotation for captioning services, let alone a range of quotations. Further, Petitioner does not discuss any efforts it made to seek competitive quotations. Beyond merely stating that it has received one quote from the television station, there is no evidence

Captioning Requirements, 16 FCC Rcd 13611 (2001) (reviewing sufficiency of information provided with respect to the four factors).

^{19/} *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*, 13 FCC Rcd 3272, 3366 (1997).

^{20/} *Outland Sports*, ¶ 7.

^{21/} Petition at p. 2.

^{22/} *Id.*

demonstrating that Petitioner opened a dialogue or sought any pricing quotations from any competitive providers of closed captioning services.²³

Petitioner, moreover, did not provide sufficient information regarding the financial resources upon which it relies to produce its video program, and the limited information that has been provided indicates that Petitioner has substantial resources. Petitioner provides three quarterly financial statements for the quarters between January 1, 2005 through September 30, 2005.²⁴ Petitioner also includes a Balance Sheet as of December 21, 2005.²⁵ According to these documents, Petitioner carries a general fund balance of approximately \$50,000 over from quarter to quarter.²⁶ Additionally, Petitioner indicates that it receives over \$111,000 in income each quarter and according to its December Balance Sheet has total assets of over \$88,000.²⁷ With this expanse of revenues and assets, it is unclear how Petitioner could not budget closed captioning into its annual expenses. Petitioner offers no documentation to demonstrate how a \$400 to \$600 per week charge for captioning will create such an undue burden with over \$111,000 in income received quarterly and assets totaling over \$88,000.²⁸ In sum, Petitioner fails to provide sufficient information for the Commission to assess its financial resources, and the information that has been provided demonstrates that the Petitioner has ample resources to meet its legal requirement to incorporate closed captioning into its programming.

Further, Petitioner fails to state whether it has sought other means to recoup the cost of captioning, such as through sponsorships or grants, or whether Petitioner solicited captioning assistance from the distributors of its programming. As to the latter, the Commission has

^{23/} *Id.*
^{24/} Petition Attachment pp. 4-6.
^{25/} Petition Attachment p. 7.
^{26/} Petition Attachment pp. 4-6.
^{27/} Petition Attachment p. 4-7.
^{28/} *Id.*

determined that petitioners must make an effort to solicit such assistance and provide the distributor's response to its solicitation.²⁹ There is a line item in Petitioner's quarterly financial summaries entitled "Telecast Sponsors" however no further information is given as to what this means.³⁰ Neither the Petition, nor the supplemental materials submitted in support of the Petition make reference to the manner in which Petitioner may have sought assistance from outside sources to help cover the costs associated with closed captioning. Petitioner has therefore failed to provide sufficient evidence to support a claim for exemption under the first factor.

Second factor: The impact on the operation of the provider or program owner. The Petition provides minimal information indicating that compliance with closed captioning requirements will adversely impact Petitioner's operations. Petitioner claims that compliance with the closed captioning rules would double the cost to air the program.³¹ It states that without exemption, the Church will have to discontinue the telecast.³² However, Petitioner fails to provide any supporting documentation or financial analysis for these assertions. As discussed above, the limited financial analysis that has been offered indicates that Petitioner's operations, which have over \$88,000 in assets and generates over \$111,000 in quarterly income, should not be adversely impacted by Petitioner's compliance.³³ Further, Petitioner fails to provide any additional information to explain what alternatives to meeting the Commission's closed captioning rules have been considered, including what sources for closed captioning were considered. As a result, the Petition fails to provide sufficient evidence to support a claim for exemption under the second factor.

^{29/} See *Commonwealth Productions, Video Programming Accessibility, Petitioner for Waiver of Closed Captioning Requirements*, CSR 5992, Memorandum Opinion and Order, ¶ 3 (Mar. 26, 2004).

^{30/} Petition Attachment pp. 4-6.

^{31/} Petition at p. 2.

^{32/} *Id.*

^{33/} Petition Attachment pp. 4-7.

Third factor: the financial resources of the provider or program owner. Commission Rule 79.1(f)(2) provides that a petition for exemption “must be supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden.”³⁴ Additionally, in determining whether the closed captioning requirements impose an undue burden, the Commission must consider the resources that the petitioner has chosen to devote to the program in the context of the overall budget and revenues of the petitioner – and not merely the cost of captioning in relation to a particular program.³⁵ Here, Petitioner has failed to provide evidence demonstrating a burden. Instead, Petitioner offers evidence demonstrating that it has substantial financial resources that will allow compliance with closed requirements without imposing an undue burden.

Beyond Petitioner’s unsubstantiated assertion that compliance would double the cost of airing the program, Petitioner provides no information about how the incorporation of closed captioning in its programming would impact its financial condition or programming budget other than to state that it has limited resources and cannot increase any one expense.³⁶ However, as previously noted, Petitioner has income and assets which appear to be able to cover the cost of closed captioning.³⁷ Given Petitioner’s financial resources, and the lack of an argument or evidence establishing an undue burden, the Petition fails to find support under the third factor.

Fourth factor: The type of operation of the provider or program owner. Petitioner provides insufficient information regarding the type of operations that it runs. In order for the Commission to determine whether the Petition is supported under the fourth factor, Petitioner

³⁴/ 47 C.F.R. § 79.1(f)(2).

³⁵/ *Implementation of Section 305 of the Telecommunications Act of 1996 – Video Programming Accessibility*. 13 FCC Rcd 3272, 3366 (1997) (“Report and Order”).

³⁶/ Petition at p. 2.

³⁷/ Petition at pp 4-7.

should have provided detailed information regarding its operations and explained why or how complying with the closed captioning requirements would result in significant difficulty for Petitioner because of the type of operations involved. Petitioner asserts that its mission is to serve the spiritual needs of the individual, the family and the community and the purpose of the telecast is to spread the word of the gospel to persons unable to attend church.³⁸ However, Petitioner fails to explain why the nature and/or specific attributes of its operations provides a basis to exempt it from the captioning rules. Lacking such information, the Petition fails to demonstrate that an exemption is warranted under the fourth factor.

B. Exemption Criteria Under Section 79.1(d)(8)

Petitioner claims that its video program is exempt from the closed captioning requirements pursuant to Section 79.1(d)(8) of the Commission's Rules. In Section 79.1(d)(8), the Commission exempted from the captioning requirements video programming "that is locally produced by the video programming distributor, has no repeat value, is of local public interest, is not news programming, and for which the 'electronic news room' technique of captioning is unavailable."³⁹ A video programming distributor is defined in Section 79.1(a)(2) as "any television broadcast station licensed by the Commission and any multi-channel video programming distributor as defined in Section 76.1000(e) of the rules, and any other distributor of video programming for residential reception that delivers such programming directly to the home and is subject to the jurisdiction of the Commission."⁴⁰ Commenters respectfully submit that Petitioner is not a video programming distributor as defined under Section 79.1(a)(2). The Petitioner is the producer of an individual video program, and not the owner or operator of a

^{38/} Petition at 2.
^{39/} 47 C.F.R. § 79.1(d)(8).
^{40/} 47 C.F.R. § 79.1(a)(1).

television station or cable network providing a transmission or network facility to distribute programming. Thus, Petitioner does not qualify for the exemption set forth in 79.1(d)(8).

IV. CONCLUSION

For those reasons, Petitioner's request for exemption from the closed captioning requirements is not supported by sufficient evidence to demonstrate that compliance with the requirements would cause an undue burden within the meaning of Section 713 of the Act.

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WHEREFORE, for the foregoing reasons, Commenters respectfully oppose grant of the
Petition.


Respectfully submitted,

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Dated: February 27, 2006



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CERTIFICATION

I, Claude L. Stout, Executive Director of Telecommunications for the Deaf and Hard of Hearing, Inc., and a joint commenter in the attached Opposition To The Petition For Exemption From Closed Captioning Requirements Filed By Springfield Community Church, File No. CGB-CC-0090 ("*Opposition*"), hereby certify that to the extent there are any facts or considerations not already in the public domain which have been relied on in this *Opposition*, these facts and considerations are true and accurate to the best of my knowledge.

A handwritten signature in cursive script that reads "Claude L. Stout". The signature is written in dark ink and is positioned above a horizontal line.

Claude L. Stout
Executive Director

Date: February 24, 2006

CERTIFICATE OF SERVICE

I, Alice Burruss, do hereby certify that, on February 27, 2006, a copy of the foregoing Opposition of Telecommunications for the Deaf and Hard of Hearing, Inc., National Association of the Deaf, The Deaf and Hard of Hearing Consumer Advocacy Network, and Hearing Loss Association of America to the Petition for Exemption from Closed Captioning Requirements Filed by Springfield Community Church as filed with the Federal Communications Commission in CGB-CC-0090, was served by first class U.S. mail, postage prepaid, upon the Petitioner:

Rev. Donnie B. Jackson, Pastor
Springfield Community Church
1101 J.W. Hunt Boulevard
Panama City, FL 32404

A handwritten signature in cursive script, reading "Alice Burruss", is written over a horizontal line.